

ance, to take a parol agreement out of the statute of frauds, he must show acts unequivocally referring to, and resulting from that agreement, such as the party would not have done, unless on account of that very agreement, and with a direct view to its performance, and the agreement set up, must appear to be the same with the one partly performed.

These principles are declared to be recognized by a series of decisions, and in the subsequent case of *Parkhurst and Van Cortland*, reported in the same book, 273, he reaffirms the doctrine of the previous case, and maintains it to be undoubtedly sound.

In the case under consideration, in my opinion, those essential elements of unequivocal certainty in the agreement, and in the acts relied upon as part performance, are not to be found. It certainly does not appear that the possession of the complainant, Joseph Shepherd, is referrible exclusively to an agreement between him and his mother, Mary Shepherd, for the conveyance of the land to him. The consideration to be paid, or which is alleged to have been paid by him, was altogether inadequate, and hence, the effort to eke out that consideration by the attempt to show that she was likewise influenced by deference to the wishes of her deceased husband. In this view, and so far as a desire to comply with the supposed wishes of her husband are concerned, the agreement must be regarded as voluntary, and it is settled, that a court of chancery will not decree the specific performance of a merely voluntary agreement. *Black vs. Cord*, 2 *Har. and Gill*, 100.

The agreement in this case, if it can be supported at all, must be supported as an agreement to sell and convey, and such is the nature of the agreement as stated in the bill: which alleges that his mother being anxious that he should hold and enjoy the land in fee-simple, proposed to him, (the complainant,) that if he would relinquish his interest in his father's personal estate, she would sell and convey to him in fee simple, the said land. The question, therefore, is, has the complainant made out in the proof an agreement to sell and convey, and a part performance of that agreement, and above all, has he estab-